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March 26, 2021

## MEMO ENDORSED

### VIA ECF

Hon. Sidney H. Stein  
 United States District Court for the Southern District of New York  
 500 Pearl Street  
 New York, New York 10007

**Re: Letter Motion to Seal in *Doe v. New York University*, No. 21-cv-2199 (SHS)**

Dear Judge Stein:

We represent New York University (“NYU”) in the above-referenced matter, and write, pursuant to Section 5.B of the Court’s Individual Practices, to request permission to file under seal an exhibit to NYU’s forthcoming opposition to Plaintiff’s motion for a preliminary injunction (the “Motion”).

That exhibit is a photograph of Plaintiff and three other NYU students; among other things, the photograph led to NYU’s investigation of the students for potential violations of NYU’s student conduct policy. *See* Compl. ¶¶ 66-69. NYU is requesting permission to file the photograph under seal because of the Court’s order granting Plaintiff leave to proceed under a pseudonym pending the hearing on the Motion, ECF No. 9 at 3, and the portion of the Court’s Order to Show Cause directing that “any reference to plaintiff’s actual name be redacted or referred to by [a] pseudonym,” ECF No. 13 at 1. While the photograph does not contain any “reference[s] to plaintiff’s actual name,” the photo would still tend to identify Plaintiff publicly. A copy of the photo has been enclosed herein (under seal) for the Court’s consideration. Plaintiff has no objection to this request.

Relatedly, NYU wishes to advise the Court that it anticipates using pseudonyms to refer to other, non-party NYU students – including the three other students in the above-described photograph – in its opposition papers. Under the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g; 34 CFR Part 99), NYU is generally barred from disclosing personally identifiable information – including students’ names – from education records. *See* 34 C.F.R. §§ 99.3, 99.30. While FERPA contains a litigation exception, the exception applies only to the records of the student who “initiates legal action against [the] educational . . . institution,” *see id.* § 99.31(a)(9)(iii)(B), and none of the other relevant students meet that description. Courts also commonly permit such pseudonyms to be used, and use them themselves, to avoid compromising student privacy. *See, e.g., Doe v. New York Univ.*, 438 F. Supp. 3d 172, 177 (S.D.N.Y. 2020). Plaintiff also has no objection to this approach, but we welcome any further guidance from the Court.

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We thank the Court for its consideration.

Respectfully submitted,

/s/ Benjamin A. Fleming /

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Enclosure (filed under seal)

cc: All counsel of record (via ECF)

**Defendant's request to file the exhibit containing a photograph to the opposition to plaintiff's motion for a preliminary injunction under seal is granted.**

**Dated: New York, New York  
March 26, 2021**

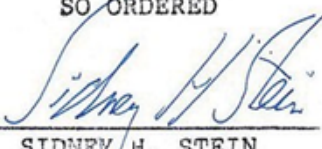
SO ORDERED  
  
SIDNEY H. STEIN  
U.S.D.J.

EXHIBIT A

FILED UNDER SEAL